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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re American Medical and Life Insurance Company

Serial No. 75/493,928

Myron Amer of Myron Amer P.C. for American Medical and Life Insurance Company.

Howard Smiga, Trademark Examining Attorney, Law Office 102 (Thomas V. Shaw, Managing Attorney).

Before Hohein, Bucher and Bottorff, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

American Medical and Life Insurance Company seeks to register the mark SECURITY DENTAL PLAN on the Principal Register for "underwriting insurance for pre-paid dental care."¹

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its services, so resembles the mark SECURITY HEALTH PLAN and design as

¹ Application Serial No. 75/493,928, filed on June 1, 1998, is based upon applicant's allegation of use of the mark anywhere and in interstate commerce on April 1, 1998. The words DENTAL PLAN are disclaimed apart from the mark as a whole.

shown below, which is registered for, *inter alia*,
"underwriting insurance for pre-paid health care,"² as to
be likely to cause confusion, to cause mistake or to
deceive:



Applicant has appealed. Briefs have been filed, but
applicant did not request an oral hearing before the Board.

We affirm the refusal to register.

Turning to the question of likelihood of confusion, in
the course of rendering our decision herein, we have
followed the guidance of In re E. I. du Pont de Nemours &
Co., 476 F.2d 1357, 1362, 177 USPQ 563, 567-68 (CCPA 1973).
The du Pont case sets forth each factor that should be
considered, if relevant information is of record, in
determining likelihood of confusion. Moreover, in
considering the evidence of record on these factors, we
keep in mind that "[t]he fundamental inquiry mandated by

² Registration No. 2,414,892, issued on December 26, 2000.
The words HEALTH PLAN are disclaimed apart from the mark as
shown. This is a two-class registration with the other class
being "health maintenance services, namely managed health care
services."

Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). See also In re Azteca Restaurant Enterprises, Inc., 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

With respect to the services of registrant and of applicant, applicant takes issue with the Trademark Examining Attorney's position that registrant's "underwriting insurance for pre-paid health care" could encompass applicant's "underwriting insurance for pre-paid dental care." In fact, applicant asserts that individuals know from their everyday experiences "that 'dental' coverage is different from general 'health' coverage." (Applicant's response of October 29, 2001, p. 3, and applicant's appeal brief, pp. 2-3).

It is well settled that services need not be overlapping in order to support a finding of likelihood of confusion. Instead, it is sufficient that the services are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks employed in connection therewith, to the mistaken belief that they

originate from or are in some way associated with the same provider. See Monsanto Co. v. Enviro-Chem Corp., 199 USPQ 590, 595-96 (TTAB 1978); and In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

In this regard, the Trademark Examining Attorney has made of record numerous use-based third-party registrations. These registrations show that even if one interprets "health insurance" as narrowly as applicant would have us (e.g., "non-dental, accident and health insurance"), dental insurance and A&H insurance can be provided by the same insurer. These third-party registrations have probative value to the extent that they suggest that the services involved in this appeal are of a type that may emanate from a single source under the same mark. In re Albert Trostel & Co., 29 USPQ2d 1783, 1786 (TTAB 1993). Hence, we conclude that the respective underwriting services herein are related.

Two other du Pont factors are related to the nature of the registrant's and applicant's respective services. Because neither recital of services contains any limitations, we conclude that the channels of trade and classes of purchasers of the parties' services must be presumed to be the same.

Turning to the marks, applicant accuses the Trademark Examining Attorney of having dissected the marks to support a finding of confusing similarity, and argues that SECURITY is not the dominant feature of applicant's three-word product mark.

Clearly, we must base our determination on confusing similarity upon a comparison of the marks in their entireties. However, we are guided, equally, by the well established principle that, in articulating reasons for reaching a conclusion on the issue of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties." In re National Data Corp., 732 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

The single most prominent feature of registrant's mark is the word SECURITY. It is the first word shown in the composite mark. It is presented in bolder letters than the words "Health Plan." These latter words comprise merely descriptive (if not generic) terminology for registrant's services. The words HEALTH PLAN have been disclaimed. The seal repeats the words SECURITY HEALTH PLAN, with the letters comprising the word SECURITY somewhat larger than

the letters of the words HEALTH PLAN. The word SECURITY is located across the top of the seal. Within applicant's typed drawing, SECURITY is again the first word, followed by highly descriptive (or generic) terminology for the type of insurance coverage applicant offers, which words have again correctly been disclaimed by applicant. Accordingly, we agree with the Trademark Examining Attorney that the word SECURITY is the dominant feature of both marks. Moreover, we find that when viewed in their entireties as to appearance and meaning, these two three-word marks create similar overall commercial impressions.

To summarize: we find that underwriting services are related, whether for dental insurance or medical insurance; we find that these services share the same channels of trade and are directed to the same classes of purchasers; and, we find that the marks of registrant and of applicant are similar in overall commercial impression.

Decision: The refusal under Section 2(d) of the Act is affirmed.